

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAQUWONDA DE'AZIA
DAISY JOHNSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

LAYVINE JOHNSON,

Respondent-Appellant.

UNPUBLISHED

August 11, 2005

No. 260576

Genesee Circuit Court

Family Division

LC No. 87-075305-NA

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Respondent Layvine Johnson appeals as of right from the trial court order terminating his parental rights to the minor child, Laquwonda Johnson (d/o/b 6/10/98) under MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days). We reverse and remand.

I

The trial court's only basis for terminating respondent's parental rights was desertion, MCL 712A.19b(3)(a)(ii). Respondent argues that there was neither clear nor convincing evidence sufficient to satisfy any of the termination factors.¹ Because we conclude that the court erred in finding clear and convincing evidence of desertion, we vacate and remand for further proceedings.

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Trejo, supra*, 462 Mich at 353; MCR 3.977(J). This Court reviews the lower court's findings under the clearly

¹ Respondent's was the only brief filed on appeal.

erroneous standard. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

A

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under any of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

The trial court found a period of 91 or more days, from "March of this year", where respondent deserted Laquwonda. This ruling is clearly erroneous, because respondent was continually "seeking custody" of Laquwonda by opposing the termination and having an attorney represent his interests in Michigan. This continued throughout the three-year history of court proceedings. While respondent did not contact FIA or the Alternatives caseworker between March and June 2004, he said he tried to funnel cards and letters to Laquwonda through his son. He did not trust FIA or Alternatives workers. He reasonably assumed that, because his visits had been cut off by the judge, FIA and Alternatives would not allow him to talk to his daughter. It was not until after the termination trial, when the judge ordered the caseworkers to set up phone contacts, that respondent learned that this assumption may have been wrong. Under all the circumstances, this is not a case where it can fairly be said that respondent deserted the child or abandoned efforts to seek custody.

Petitioner had also sought termination of respondent's parental rights under subsections (c)(i) and (ii), (g), and (j). However, the court did not specifically address these subsections in its termination opinion, or in its best interests opinion. The trial court did not clearly find the requirements of any of the other subsections satisfied by clear and convincing evidence.

Erroneous termination of parental rights under one statutory ground can be harmless error if the court also correctly found another basis for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Here, however, the judge did not find sufficient evidence to terminate respondent's parental rights under any subsection except (a)(ii). Therefore, we reverse, and remand to allow the trial court to specifically consider the evidence under (c)(i) and (ii), (g), and (j).

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder